# Supreme Court of the United States

October Term, 1975

No. 75-1716

NORMAN F. BLANCHARD, *et al.*,
*Petitioners,*

vs.

ROLLA R. JOHNSON, *et al.*,
*Respondents,*

and

MARINE ENGINEERS BENEFICIAL ASSOCIATION, ASSOCIATED MARITIME OFFICERS, AFL-CIO,
*Applicants for Intervention.*

## PETITION FOR WRIT OF CERTIORARI
**To the United States Court of Appeals**
**For the Sixth Circuit**

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Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

## OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported, but is printed in the Appendix attached hereto, *infra*, p. A4. The opinion of the District Court is reported as *Blanchard, et al. v. Johnson, et al.*, 388 F. Supp. 208 (1975) and is printed in the Appendix, *infra*, p. A1.

## STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on April 2, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## QUESTION PRESENTED

Does a rank and file member who casts a vote for union affiliation receive a meaningful choice within the meaning of 29 U.S.C. §411(a)(1) and §501(a) if only one of several bona fide proposals for affiliation is placed on the ballot?

## STATUTORY PROVISIONS INVOLVED

Section 101(a), Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §411(a)(1):

> Equal Rights. - Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations in voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and by-laws.



Civil Enforcement, Section 102:

> Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a District Court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the District Court of the United States in the district where the alleged violation occurred, or where the principal office of such labor organization is located.

Section 501, Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §501(a):

> Fiduciary responsibility of officers of labor organizations - The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members, and to manage, invest, and expend the same in accordance with its constitution and by-laws and any resolution of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and upholding or acquiring any pecuniary or a personal interest which conflicts with the interest of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and by-laws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

## STATEMENT OF THE CASE

### A. Introduction

On June 18, 1974, Petitioners who were all members in good standing of the Great Lakes and Rivers District, Masters, Mates and Pilots—Local 47 (hereinafter Local 47)[1] filed a complaint along with an application for leave to sue and a motion for a preliminary injunction in the Western Division of the United States Federal District Court for the Northern District of Ohio. The complaint was based on §§101, 102 and 501 of the Labor Management Reporting and Disclosure Act (hereinafter LMRDA) and §301 of the Labor Management Relations Act (hereinafter LMRA), 29 U.S.C. §§185, 411, 412 and 501. Petitioners sought to have the balloting on a referendum for affiliation of Local 47 with the International Longshoremen's Association, AFL-CIO (hereinafter ILA) enjoined, the ballots already cast impounded and destroyed, and any future referendum on the question of affiliation, as well as any actual merger or affiliation, enjoined unless a plan therefor had first been submitted to the Court which contained provisions for full disclosure of all relevant terms of any proposed affiliation, accompanied by sufficient time before balloting for members to offer their views thereon, and adequate protection for the secrecy and integrity of the ballot.

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[1] Local 47 is a "Labor Organization" within the meaning of 29 U.S.C. §402. Its membership is made up of approximately 550 men who are employed as supervisory personnel on ships which sail the Great Lakes and adjoining rivers and waterways. The members of Local 47 are seafaring men who spend most of the year on ships sailing the Great Lakes. The principal office of Local 47 is in Cleveland, Ohio. The individual Defendants in this action are or were officers and members of the Executive Board of Local 47 (A. 202, 215). (A refers to the Appendix in the Court of Appeals.)



### B. Background

While Local 47 was going through the process of disaffiliation with the IOMMP,[2] it began to receive inquiries from other organizations as to possible affiliation with them. These included inquiries from the International Brotherhood of Teamsters, the Marine Engineers Beneficial Association—Associated Maritime Officers, AFL-CIO (hereinafter MEBA), the ILA, the Steelworkers Union, and Local 333, United Marine Association (A. 102-104, 129).

The MEBA proposal for affiliation which was made to Local 47 included a promise of complete autonomy for Local 47 (A. 129). MEBA also made a number of additional proposals accompanying their offer of affiliation which, arguably, would have been of great benefit to the members of Local 47.[3]

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[2] For many years, Local 47 was affiliated with the International Organization of Masters, Mates and Pilots (hereinafter IOMMP), but in November, 1973, it broke away from that organization because the IOMMP made certain changes in its constitution which threatened the autonomy of Local 47 (A. 126, 127, 137). Part of these constitutional changes involved the IOMMP affiliation with the ILA.

[3] These proposals were set down in writing in a letter from Raymond T. McKay, President of MEBA to Defendant Duff the newly elected President of Local 47, on November 11, 1974 and included:

a. a grant of an autonomous charter to Local 47 with a right to retain its own treasury, officers, constitution and by-laws;

b. the right to negotiate contracts in Local 47's existing bargaining units and complete protection of the AFL-CIO no-raiding agreement;

c. the right to continued, non-interference with the operation of the Great Lakes and Rivers District and Maritime Pension Plan;

d. a waiver of all charter fees and back dues;

e. a per capita fee of $1.35 per member per month payable to MEBA for active members only, not retired members;

*(Footnote continued on following page)*

Around May 16, 1974, Respondent Johnson acting alone and without the other members of the Executive Board of Local 47, completed negotiations with President Thomas W. Gleason of the ILA for an affiliation of Local 47 with the ILA (A. 140). At no time did Johnson or Vice President Duff of Local 47 read the constitution of the ILA, preferring instead to rely upon the oral assurances of its President that Local 47 would retain its autonomy[4] (A. 142-143).

On May 24, 1974, the Defendants mailed a ballot to each member of Local 47 for a referendum on the question

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f. available office space in MEBA offices and use of their hard and soft ware by Local 47;

g. a joint organizational campaign on the Great Lakes and Rivers to be financed by MEBA; and

h. access to MEBA's legislative, lobbying machinery (A. 225-228).

The Teamsters apparently also offered Local 47 a million dollar fund for organization purposes (A. 129). However, for reasons of their own, the Executive Board chose to vote on and submit only the affiliation proposal from the ILA to the membership for a vote (A. 104).

[4] The price of the affiliation agreement with the ILA also meant that Local 47 members would have to pay $1.35 per month per capita tax which would amount to approximately $9,000 per year (A. 106, 143). Neither was there any written understanding as to the relationship of Local 47 and the ILA in regards to the certain articles of the ILA's constitution which raised serious questions as to whether Local 47 would remain autonomous or not (A. 142-143). The agreement between Defendant Johnson and President Gleason of the ILA was finalized in a series of correspondence dating from May 17, 1974 to May 24, 1974 (A. II: 2-5).

The Executive Board members discussed and approved the affiliation through a series of individual telephone calls, with nothing conveyed to them in writing and no group debate or discussion on the merits or liabilities of the proposed affiliation (A. 99-100, 147).

The Executive Board of Local 47 did not discuss the terms or conditions for affiliation of the other affiliation offers before accepting the ILA proposal (A. 150-151). At no time was the understanding entered into between Defendant Johnson and President Gleason of the ILA reduced to writing and communicated to the membership of Local 47 (A. 104-105, 111).



of affiliation with the ILA (A. 16-19, 147). No other proposal was offered for a vote (A. 149-150). The letter attached to the ballot purported to represent the entire agreement between Local 47 and the ILA, but it contained no mention of the previously discussed oral agreements for the payment of a per capita tax, or of any constitutional provisions of the ILA (A. 141-144). This letter contained all of the information which the Executive Board in their infinite wisdom chose to divulge to the members of Local 47[5] (A. 104-105).

The First Referendum was enjoined and the ballots impounded by the District Court because the secrecy and the integrity of the ballot had been seriously violated.[6] The Second Referendum was also enjoined by the Court basically because insufficient notice and information had been given to the membership.[7]

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[5] The reason given by Defendant Johnson for the appalling lack of communication with the seafaring membership concerning the other affiliation offers which had been received was that as the full time staff officer for Local 47 he did not believe this was in the best interest of the membership to know (A. 129, 152).

The only other means by which the membership of Local 47 would have known of the proposed plans to affiliate with the ILA was if they had attended the 1974 union convention where the idea was casually discussed, but Local 47's constitution and by-laws require you to be an elected delegate to attend the convention with reimbursed expenses (A. 153). Any other member of Local 47 who wished to attend was required to travel to the convention site from his own home at his own expense.

[6] The referendum ballots were sent out to members of Local 47 to be returned to a post office box in Cleveland by June 24, 1974. The outside envelope which the members returned contained the signature and membership number of the voter. The inside envelope contained the ballot (A. 115). Defendants Johnson and Duff and other persons under their direction would periodically pick up the ballots from the post office box and outside the presence of any neutral observer, or any observer at all, open both ballots thereby violating the secrecy of the balloting and enabling Defendants to determine the trend of the election so they could obtain more favorable votes for affiliation with the ILA if such was needed (A. 115).

[7] The Court issued its Order July 5, enjoining the conduct

*(Footnote continued on following page)*

On December 3, an informal hearing was conducted by the Court in chambers to approve a plan for the third referendum which would conform to the Court's July 5, 1975 order. At that hearing the Court denied MEBA's motion to intervene in this action but ordered that the affiliation proposal of MEBA be placed on the ballot along with that of the ILA.[8]

### C. Proceeding Below

On appeal to the Sixth Circuit, the Court of Appeals affirmed the entire District Court's decision with the exception of its direction to include the MEBA proposal on a referendum ballot.

Petitioners now petition this Court to review the Court of Appeals judgment of reversal in favor of the Respondent.

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of the second referendum and any future referendum unless approved by the Court. The Court went on to hold:

"No such plan will be approved unless it contains, at a minimum, adequate safeguards for the secrecy of the ballot, full disclosures of all the terms of all affiliation proposals, as well as copies of the constitution of the organization with which affiliation is to be considered and voted upon, and access to the mailing list of Defendant Local 47 by all members in sufficient time to express their views before a vote is to begin." (A. 200-211).

[8] In support of this aspect of its order the Court stated:

". . . Although it is true that §3 of Article XXIII of the Constitution of Local 47 does not require that all affiliation proposals be voted upon the same ballot, it somehow seems unnecessarily grudging for the union officers to conduct a referendum on only the proposal which they personally support. This Court has previously indicated that it would not hesitate to enjoin the Defendants from using the Union Constitution to avoid a referendum on an affiliation proposal. Such a refusal by union officers, who are, after all, fiduciaries, runs afoul of the policies which underlie §§411 and 501, because seriatim balloting in this case may result in unfair unadvantage for the proposal favored by the union leadership. Thus, the Court will enjoin the use of the constitutional provision and order the MEBA proposal placed on the ballot along with the ILA proposal." (A. 229).



## REASONS FOR GRANTING THE WRIT

### I. This Case Presents an Important Issue of National Labor Policy Requiring Resolution by This Court.

#### A. The issue in this case is one of first impression involving the construction of the Labor Management Reporting and Disclosure Act, 29 U.S.C. §§411 (a) (1) and 501 (a).

The issue presented by this case[9] is of widespread nationwide concern as demonstrated by substantial litigation involving similar issues in other circuits.[10] Since the

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[9] It should be noted that the decision of the Court of Appeals is unclear as to which statute its decision is grounded upon. The Court of Appeals held that the District Court unnecessarily intruded into the internal operations of Local 47 by directing that the MEBA proposal be added to the ballot. And the Court thus concluded that §411 (a) (1) did not disallow seriatim voting on affiliation proposals so long as sufficient information about all proposals which were received by the Executive Board were disseminated to the membership. Consequently, an initial reading of the decision of the Court of Appeals seems to indicate that the Court only considered 29 U.S.C. §411 (a) (1) in arriving at its decision.

Footnote 8 of the Court's decision, which apparently was an attempt to clarify the decision, only helps to becloud it. The footnote reads as follows:

"The portions of the Judgment of the District Court which we affirm are properly grounded upon Section 411 (a) (1). The actions directed by the portion of the Judgment which we reverse would be improper under either Section 411 (a) (1) or Section 501 (a). Thus we need not reach the question of the applicability of the Section 501 (a) fiduciary duty to the instant case."

The footnote indicated that the Court did not reach the question of the applicability of Section 501 (a). However, the second sentence of the footnote indicates that the actions directed by the Judgment would be improper under either Section 411 (a) (1) or Section 501 (a). Thus, it is apparent that the District Court indeed did consider Section 501 (a) in concluding that the insertion of MEBA on the ballot would be improper under both sections.

[10] *Cefalo v. Moffett*, 449 F.2d 1193 (D.C. Cir., 1971); *Highway Truck Drivers v. Cohen*, 182 F. Supp. 608 (E.D. Pa., 1960), aff'd 284 F.2d 162 (3rd Cir., 1960), *cert denied*, 365 U.S. 833

*(Footnote continued on following page)*

enactment of Landrum-Griffin voluminous discussion of the duties imposed upon unions by §411 (a) (1) and §501 (a) has appeared in the literature,[11] yet this Court has not set forth the comprehensive standards needed to protect the rights of millions of rank and file members when they are voting in union conducted elections.

### 1. Equal voting rights

The impetus behind the Labor-Management Reporting and Disclosure Act of 1959 was the shocking findings of the McClellan Committee. The entire thrust in the first report of the McClellan Committee was in support of a proposition that unions should be democratic.[12] Congress in enacting the Bill of Rights of the LMRDA, Section 411 (a) (1), determined:

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(1961); *Keck v. Employees Independent Ass'n.*, 387 F. Supp. 241 (E.D. Pa., 1974); *Kerr v. Shanks*, 466 F.2d 1271 (9th Cir., 1972); *Navarro v. Gannon*, 385 F.2d 512 (2nd Cir., 1967); *Nelson v. Johnson*, 212 F. Supp. 233 (D. Minn., 1963), *aff'd* 325 F.2d 646 (8th Cir., 1963); *Pignotti v. Sheet Metal Workers*, 477 F.2d 825 (8th Cir., 1973), *cert. denied* 414 U.S. 1067 (1974); *Sabolsky v. Budzonowski*, 457 F.2d 1245 (3rd Cir., 1972), *cert. denied*, 409 U.S. 853 (1973); *Sertic v. The District Council of Carpenters*, 423 F.2d 515 (6th Cir., 1970); *Schuchardt v. Millwrights & Mach. Erectors Loc. Union No. 2834*, 380 F.2d 795 (10th Cir., 1967); *Smith v. General Truck Drivers*, 181 F. Supp. 14 (D.C. Calif., 1960).

[11] Aaron, *The Labor Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851 (1960); Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 MICH. L. REV. 819 (1960); Dugan, *Fiduciary Obligations Under the New Act*, 48 GEO. L. J. 277 (1959); Hickey, *The Bill of Rights of Union Members*, 48 GEO. L. J. 226 (1959); Rothman, *Legislative History of the "Bill of Rights" for Union Members*, 45 MINN. L. REV. 199 (1960); Union Officers-Fiduciary Duties, 15 A.L.R.3d 939; Wollett, *Fiduciary Problems Under Landrum-Griffin*, 13 N.Y.U. ANN. CONF. ON LABOR 267 (1960).

[12] See, Interim Report of the Select Committee on Improper Activities in the Labor or News Review, Sp. Rep. No. 1417, 85th Cong., 2d Sess. (1958).



> "The efficiency of a monolithic union under autocratic rule is gained at too great a price if it necessitates any sacrifice of the members' rights to determine the course of their organization. The balance was struck in favor of union democracy. Only a union responsive to the rights of its members can achieve the ideals of responsibility, opportunity and self-determination that are recognized as fundamental values to the labor movement." *Navarro v. Gannon*, 385 F.2d 512, 518 (2nd Cir., 1967).

The basic purpose then of the "Bill of Rights" is to assure to union members a basically democratic union and a concomitant right to determine the ultimate course of their organization.[13] One of the first cases supporting these rights was *Young v. Hayes*, 195 F. Supp. 911 (D.D.C., 1961). In that case union members brought an action pursuant to §411 (a) (1) to restrain the union from putting into effect constitutional amendments approved by the general membership in a vote on a ballot that grouped 47 such amendments under one proposal. Granting the members' request for injunctive relief, the Court held:

> ". . . It would appear to this Court that a plain reading of the Bill of Rights portion, as well as others, is a clear indication by Congress *that the right to vote extended in the Act is not a mere naked right to cast a ballot.* Rather, the general tenor of the act would seem to indicate that those who make up the management of the union may not submit amendments for referendum to the membership in any form they wish. Permitting a union to submit propositions to its membership in any form they wish might very well open up the way of usurpation of power by union management, which the Court cannot believe was intended by the framers of the Landrum-Griffin Act." (emphasis added)

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[13] *Schuchardt v. Millwrights & Machine Erectors, Loc. Union No. 2834*, 380 F.2d 797 (10th Cir., 1967), *Navarro v. Gannon*, 385 F.2d 512 (2nd Cir., 1967).

The next case in this area is *Sertic, et al. v. The District Council of Carpenters,* 423 F.2d 515 (6th Cir., 1970). The principal question presented in that case was whether a referendum resulting in an increase in dues of labor union members, could be combined on the same ballot with approval of negotiations of a wage increase without violating §411 (a) (3) of the Act. The Court held that voting on multiple questions precluded a meaningful vote on the dues issue alone, and declared the referendum invalid as not complying with the requirements of the Act.[14]

Finally, in *Sheldon v. O'Callaghan,* 497 F.2d 1276 (2nd Cir., 1974), several union members sought an injunction to prevent a new constitution from taking effect because the officers of the union were, *inter alia,* stressing the popular features of the proposed constitution while playing down or refusing to communicate to the members those aspects which would have been unpopular with many members of the union. The plaintiffs based their suit on §411, contending among other things that the union officers had violated that section in:

> refusing to permit Plaintiffs to transmit their views to the other members of the union before or during the voting period or to have access to the union's mailing list in order to disseminate their views.

[14] At first glance this case would appear to stand for the opposite proposition that is espoused in the instant case. However, even though the Court in *Sertic* was concerned with a different sub-paragraph of §411 (a), the rationale behind the decision is still applicable here. That rationale being that the members are entitled to a meaningful and equal vote on issues that affect them. In *Sertic* the members were deprived of this right by the inclusion of multiple issues on one ballot. However, in the present case the members are being denied a meaningful choice by the exclusion of MEBA from the ballot. When one examines the long continuing struggle between the different labor unions for affiliation with Local 47, one has to conclude that the ILA would be given an unfair advantage by seriatim voting and that the members would be deprived of a meaningful choice. There can be no meaningful choice where there is only one union on the ballot.



The Court concluded that the LMRDA required the Defendants to make the list of members of the Union available to a mailing service so that the Plaintiffs could transmit their views on the issues involved in the referendum to the membership.

That Respondents here have chosen seriatim balloting, just as they chose to violate the secrecy of the ballot in the first referendum and chose to not disclose important information to the members in the second referendum, does not insulate them from the requirements of §411 (a) (1). The clear policy of the Act is to bid farewell to the regime of benevolent well-meaning union autocrats and to give favor to a system of union democracy with its concomitants of free choice and self-determination. It is respectfully urged that free choice and self-determination, what petitioners call a meaningful choice, can only be accomplished by having both affiliation referenda on the ballot.

### 2. Fiduciary duties of union officials

Section 501 (a) declares that union officials occupy positions of trust with respect to their union. There has been considerable discussion and disagreement about the breadth of the fiduciary obligations imposed upon union officials by this section.[15]

The Respondents contend that the duty imposed upon them pursuant to §501 (a) is to be narrowly construed and limited to only fiscal matters which affect Local 47.

Though the Circuits are not in agreement as to the import of this section,[16] the "majority view"[17] is that §501

[15] Clark, *The Fiduciary Duties of Union Officials Under Section 501 of the LMRDA,* 52 MINN. L. REV. 437, 440 (1967).

[16] See, *Gurton v. Arons,* 339 F.2d 371 (2nd Cir., 1964); *Yanity v. Benware,* 376 F.2d 197 (2nd Cir., 1967); and *Phillips v. Osborne,* 403 F.2d 826 (9th Cir., 1968) for the holding that §501 is meant to cover only money and property.

[17] See footnote 17 on following page.

(a) imposes a duty upon the Respondents which is "as broad as human experiences in the labor field." *Nelson v. Johnson, supra,* note 10. Indeed, the legislative history supports this broader construction.[18]

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[17] Further support for the proposition that §501(a) applies to non-fiscal as well as fiscal matters can be found in the language of the statute itself. The second sentence of §501(a) which supposedly refers only to fiscal wrongdoing, contains language which has been interpreted as imposing fiduciary duties in a non-fiscal nature. See, *Nelson v. Johnson, supra* at note 10; *Sabolsky v. Budzonowski, supra* at note 10; *Pignotti v. Sheet Metal Workers, supra* at note 10; Rosen, *Fair Representation, Contract Breach and Fiduciary Obligations; Unions, Union Officials and the Worker in Collective Bargaining,* 15 HASTINGS L.J. 391, 430 (1964).

Despite the scarcity of direct precedent, it seems plain that all union officers and employees have always been subject to the usual common-law fiduciary duties of an agent. See Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959,* 58 MICH. L. REV. 819 (1960); Clark, *The Fiduciary Duties of Union Officials Under §501 of the LMRDA,* 52 MINN. L. REV. 437 (1967); *Dusing v. Nuzzo,* 26 N.Y.S.2d 345 (1941); *Tinkler v. Powell,* 23 Wyo. 352, 151 P. 1097 (1915); *House v. Schwartz,* 18 Misc.2d 21, 25, 188 N.Y.S.2d 308, 313 (Sup. Ct., 1959).

[18] Section 501 of the LMRDA was taken in total from the Elliott Bill, H. R. 8342, 86 Cong. 1st Sess. Section 501 (1959). The Bill was reported out by the House Committee on Education and Labor. Since there is no indication in the legislative history that any changes were intended by the House when it included the fiduciary provision of the Elliott Bill as part of the Landrum-Griffin Bill which was ultimately enacted, the supplementary report accompanying the Elliott Bill is extremely relevant. As to whether the fiduciary duty of a union official extends to non-fiscal matters, the supplementary report notes:

> "We affirm that the committee bill is broader and stronger than the provisions of S. 1555 which relate to fiduciary responsibilities. S. 1555 applied the fiduciary principle to union officials only in their handling of 'money or property' (See, S. 1555 Sec. 610), apparently leaving other questions to the common law of the several States. Although the common law covers the matter, we considered it important to write the fiduciary principle explicitly into the federal labor legislation. Accordingly, the committee bill extends the fiduciary principles to all the activities of union officials or other union agents or representatives." H. R. Rep. No. 741, 86 Cong. 1st Sess. 81 (1959).



The duties created in §501 (a) must include the duty to keep the membership informed on matters which they, the rank and file, must decide. It is the duty of the union leadership to see that the lines of communication and dissemination of views and opinions are kept open and working, especially when, as here, affiliation with the ILA would change the very form and existence of the local union. The Respondents in the instant case have breached the duty owed to the members of Local 47 pursuant to §501 (a) by insisting on seriatim balloting thus failing to provide the members of Local 47 with a meaningful vote on the affiliation referendum.

The Respondents defend their breach of trust by asserting that their actions are proper under the union's constitution. However, the Courts have not been hesitant to enjoin activity protected or authorized by union by-laws and constitutions when it is shown that it violates the provisions of the LMRDA. See, *Pignotti v. Sheet Metal Workers, supra,* note 10; *Sabolsky v. Budzanowski, supra,* note 10.

The compelling need for this Court to exercise its certiorari jurisdiction in a case such as this to resolve these conflicts was cogently articulated by a member of the Illinois bar, R. Theodore Clark, Jr.:

> "The imposition of fiduciary duties upon union officials represents an important land mark in federal labor legislation. As one writer has noted, they represent the judgment of Congress, which most certainly will never be reversed, as to the minimum applicable and legal standards by which the behavior of union leaders must be measured. (Footnote omitted) It is unfortunate, however, that Congress in enacting such an important provision used language which is open to so many varying interpretations. Although the process of 'litigation elucidation' (Footnote omitted) has resolved some of the uncertainties, the Supreme Court

will undoubtedly have to resolve others, especially with respect to the breadth of the fiduciary duties imposed upon union officials." *The Fiduciary Duties of Union Officials Under Section 501 of the LMRDA*, 52 MINN. L. REV. 437, 481.

**B. Review of this case is essential to the preservation of the fundamental rights of the union members and essential to guarantee the full and active participation by the rank and file in the affairs of their union.**

Another compelling reason for this Court to grant certiorari in this case is to protect and preserve the fundamental principle enunciated in *Musicians Federation v. Wittstein*, 379 U.S. 171 (1964) and *Calhoon v. Harvey*, 379 U.S. 134 (1964) that there should be full and active participation by the rank and file in the affairs of the union. In the former case the Court cited with approval the following language from the Senate Committee report accompanying S.1555 (Kennedy-Ervin Bill):

> "Union members have a vital interest therefor in the policies and conduct of union affairs. To the extent that union procedures are democratic they permit the individual to share in the formation of union policy. This is not to say that in order to have democratically responsive unions, it is necessary to have each union member make decisions in detail as in a New England town meeting. What is required is the opportunity to enforce policy and leadership by free and periodic elections."

The instant case, however, does not deal with the members making decisions concerning details of union business. On the contrary, the question of affiliation with the ILA or the MEBA concerns the very existence of Local 47. It is this kind of decision that should only be made with the elective procedure guaranteed all the trappings of the democratic process. This ought to include the right



to make a meaningful choice between bona fide competing entities.

Though the *Musicians Federation v. Wittstein* case concerned Section 411(a)(3)(B) rather than Section 411(a)(1) or Section 501(a), petitioners submit that it is still applicable. In fact, these latter sections impose a greater duty upon the union leadership and a greater right is protected by them than by the former section. In *Calhoon* the Court long ago recognized the subtle ways by which election rights can be removed through discrimination at a less visible stage of the political process.

Just as the Court was concerned with infringement of the equal right to nominate candidates for union office so should the Court be concerned about the infringement of equal opportunity to vote for affiliation referenda. Both the right to nominate and the right of affiliation concern fundamental voting rights of the rank and file members and should be protected accordingly.

A fiduciary generally owes a duty of loyalty in conscientious dealing toward another because of the nature of the relationship or the subject matter of the transaction.[19] Preserving union democracy often involves this duty of loyalty in protecting individuals and minorities against numerical majorities. In this country we have not been willing to trust even governmental self-restraint in dealing with basic liberties. We rely upon rigid constitutions enforced by an independent judiciary. Labor unions play a more important role in the community than other private organizations for their powers are greater and their functions are different from those of a fraternal association or

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[19] "Some fiduciary relations are undoubtedly more intense than others. The greater the independent authority to be exercised by the fiduciary duty, the greater the scope of the fiduciary duty. Thus a trustee is under a stricter duty of loyalty than is an agent upon whom limited authority is conferred . . ." Scott, *The Fiduciary Principle*, 37 CALIF. L. REV. 539 (1949).

a social club. Even a corporation rarely affects a shareholder to the same degree that the bargaining representative influences the lives of employees in the bargaining unit. Furthermore, labor unions occupy their present position largely by force of law:

> "The government which gives unions this power has the concomitant obligation to provide safeguards against abuse. The most effective safeguard is legal assurance that unions will be responsive to the desires of the men and women who they represent."[20]

## II. This Case Presents a Good Vehicle for This Court to Consider and Decide the Issue Presented Herein.

The facts of this case present the competing policy interest involved in the clearest and most compelling light and therefore provide this Court with an optimal opportunity to consider and decide the substantial and unresolved legal issue contained herein. Throughout these proceedings the officers of Local 47 have referred to MEBA's efforts to be on the affiliation ballot as a "raid" on Local 47 members. On the Contrary, however, there is overwhelming evidence that establishes that the Respondents, and not MEBA, by their conduct in attempting to effectuate an affiliation with the ILA, "raided" the rights of the rank and file of Local 47. The Executive Board of Local 47 did not discuss the terms and conditions of the other affiliation offers before accepting the ILA proposal,[21] understandings entered into between Respondents and the ILA were not reduced to writing nor were they communicated to the membership of Local 47,[22] and adequate safeguards for the

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[20] Cox, *The Role of Law in Preserving Union Democracy*, 72 HARV. L. REV. 609, 610-611 (1959).

[21] A. 150-151.

[22] A. 104-105, 111.



secrecy of the ballot were ignored.[23] It was this blatant disregard for the rights of the rank and file which led the District Court Judge to conclude that the Respondents had violated Section 411 (a) (1) and had breached their duty under Section 501 (a), thus requiring him to enjoin, in effect, not one, but three affiliation referenda.

The rights of the individual union member must be defined when the very existence of their organization is at stake. The parameters of the labor law issue contained in this case are of nationwide concern and in need of clarification by this Court.

## CONCLUSION

The central issue in this case is whether the rank and file members of Local 47, whose voting rights have been tread upon, are to be deprived of a meaningful vote since they will not be permitted to choose between bona fide competing affiliation proposals.

If the answer is to be "yes", it should be so only after a reasoned consideration and explanation by this Court of the competing National Labor Law policy interests which compel such a result.

Accordingly, Petitioners pray that this Court grant their petition for a writ of certiorari.

Respectfully submitted,

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[23] A. 115.

# APPENDIX

## OPINION OF THE DISTRICT COURT

(Filed January 20, 1975)

Civil Action C74-546

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

---

NORMAN F. BLANCHARD, *et al.*,
*Plaintiffs,*

v.

ROLLA R. JOHNSON, *et al.*
*Defendants*

and

MARINE ENGINEERS BENEFICIAL ASSOCIATION, ASSOCIATED MARITIME OFFICERS, AFL-CIO,
*Applicants for Intervention.*

---

ORDER

This cause is before the Court on a motion by District 2, Marine Engineers Beneficial Association. Associated Maritime Officers [hereafter MEBA] to intervene as a party plaintiff and on a motion by MEBA to be placed on the ballot on a referendum to be held on the question of affiliation. The defendants have also petitioned the Court for its approval of their plan for the conduct of the balloting. All have briefed these matters.

As the Court has taken pains to show in its Memorandum of July 9, 1974, this suit is based on statutes, 29

U.S.C., §§412 [sic] and 501, which confer certain rights on *members* of labor organizations. Thus, there are no rights here being asserted which benefit unions as distinct from their members. Therefore, since Rule 24, Federal Rules of Civil Procedure, assumes that there is an intersection of interests among plaintiffs and intervenors, it is clear that the motion to intervene of MEBA must be denied.

Placing MEBA on the affiliation referendum ballot is quite another matter however. Although it is true that § 3 of Article XXIII of the Constitution of Local 47 does not require that all affiliation proposals be voted upon on the same ballot, it somehow seems unnecessarily grudging for the union officers to conduct a referendum on only the proposal which they personally support. This Court has previously indicated that it would not hesitate to enjoin the defendants from using the union constitution to avoid a referendum on an affiliation proposal. Such a refusal by union officers, who are, after all, fiduciaries, runs afoul of the policies which underlie §§ 411 and 501, because seriatim balloting in this case may result in unfair advantage for the proposal favored by the union leadership. Thus, the Court will enjoin the use of the constitutional provision and order the MEBA proposal placed on the ballot along with the ILA proposal.

As to the defendants' plan for holding the balloting, the Court expressly approves the use of the American Arbitration Association.

Plaintiffs' objections to the timing of the referendum do not appear to be well taken. Given the wide geographic dispersal of the membership, no time would seem to be particularly felicitous for any election. However, the wide dispersal does argue for a maximum period of time between the mailing of ballots and the deadline for their return so as to facilitate the free discussion and interchange of ideas which lie at the heart of § 411. The Court



therefore finds any period of less than thirty (30) days for balloting to be suspect, within the facts of this case. The Court will thus require at least thirty (30) days for the members to discuss the issues and return their ballot.

Plaintiffs' objections to the limitations on the mailing of views by members are well taken. The Court agrees that there is no reason why members should be denied the opportunity to mail their views as often as they wish and at the times they wish. Since the concept of majority rule is at the center of federal labor policy, *Sheldon v. O'Callaghan*, 497 F.2d 1276, 1282, 86 LRRM 3064 (2nd Cir. 1974), it is imperative that the lines of communication among the membership be as unfettered as reason can make them. Union officials bear a heavy burden of justification for any acts which unnecessarily restrain the ability of the members to discuss matters on which they are to vote. No justification for this limitation has been offered by the union leadership and none appears to the Court. Accordingly, the plan as proposed is modified to permit any member to mail his views at any time to the membership as often as he chooses so long as he bears the expense of the mailings.

To sum up: The motion of MEBA to intervene as a party plaintiff is denied; the affiliation proposal of MEBA shall appear on the ballot along with that of the ILA; the referendum shall be held at such time as defendants propose through the auspices of the American Arbitration Association; defendants shall permit at least thirty (30) days for dissemination of views by the membership following the mailing of the ballots; and any member shall be permitted to mail his views at any time to the membership through the AAA, as often as he wishes so long as he bears the expense thereof.

IT IS SO ORDERED.

/s/ NICHOLAS J. WALINSKI
*United States District Judge*

## OPINION OF THE COURT OF APPEALS

(Filed April 2, 1976)

Nos. 75-1606, 75-1607

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

---

NORMAN F. BLANCHARD, *et al.*,
*Plaintiff-Appellees,*

v.

ROLLA R. JOHNSON, *et al.*,
*Defendants-Appellants.*

---

APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division.

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Before: EDWARDS, CELEBREZZE and ENGEL, Circuit Judges.

CELEBREZZE, Circuit Judge: Appellees, members of the Great Lakes and Rivers District, Masters, Mates and Pilots—Local 47 (hereinafter Local 47), initiated this action in the District Court seeking to enjoin a referendum which was in progress among the members of Local 47. The referendum raised the question of whether Local 47 should affiliate with the International Longshoreman's Association (hereinafter ILA). Appellees were supporters of a rival union, District II Marine Engineers Beneficial Association—Associated Maritime Officers (hereinafter MEBA), and of its attempt to convince Local 47 to affiliate with MEBA. Named as defendants were Local 47; Rolla R. Johnson, the Local's President and a member of its Executive Board; and seven other members of the local's Executive Board. Appellees, in their Complaint, alleged that the officers violated their fiduciary



duties to and deprived the members of Local 47 of their right to "an intelligent and knowledgeable" vote on the issue of affiliation.

Local 47 has approximately 550 members, all of whom are supervisory personnel on ships which sail the Great Lakes and adjoining waterways. Due to the limitation on membership to supervisors, Local 47 is regulated by the Labor Management Reporting and Disclosure Act of 1959 (hereinafter LMRDA), 29 U.S.C. § 401 et seq. (1970).

The nature of their employment makes communication among members of Local 47 difficult. An annual convention is held in March, and every third year officers are nominated by the convention delegates and thereafter elected by mail ballot of all members.

In November of 1973 Local 47 disaffiliated itself from the International Organization of Masters, Mates and Pilots, because that organization had changed its constitution in a manner which threatened the autonomy of Local 47. Thereafter, a number of labor organizations sought the affiliation of Local 47, including ILA, MEBA and the Teamsters. The District Court found that these three organizations submitted definite affiliation proposals to the Executive Board of Local 47. The Executive Board, pursuant to Article XXIII of the Constitution of Local 47, considered and approved the ILA proposal and submitted it by referendum to the membership for ratification or rejection. Appellees contended below that the Executive Board, whose members considered the ILA proposal superior to the other proposals, failed to provide the membership with sufficient information about the other proposals to allow the members to cast an informed vote.

On June 18, 1973, following two days of hearings, the District Court impounded the ballots in the affiliation referendum because the Executive Board had seriously

impaired the secrecy and integrity of the balloting by opening some ballots to gauge the trend of the election. The District Court did not enjoin any future referendum "feeling it sufficient to leave the officers free to conduct another vote in accordance with Local 47's constitution and '. . . with adequate information as to the terms of any affiliation with the ILA.' "[1]

Appellants held another referendum immediately, mailing out new ballots and cover letters on June 21, 1974. Appellees filed a motion for a temporary restraining order which the District Court declined to issue. Rather, the District Court set a July 1, 1974, hearing on Appellees original motion for a preliminary injunction. Following the July 1, 1974, hearing the District Court issued the Memorandum Opinion, in which it concluded that 29 U.S.C. § 411(a)(1)[2] guaranteed union members the right to a meaningful vote in union elections. The District Court further concluded that 29 U.S.C. § 501(a) created a duty on the part of the officers of a union to provide the membership with sufficient information on the issues to allow members to cast an informed vote. The trial court noted that union officers may convey their opinions on the issues to the membership but are also duty-bound to see that points of view at variance with their own, if such exist, are disseminated. The District Court concluded that the membership had a right, by virtue of Sections 411(a)(1) and 501(a), "to know and vote on all affiliation proposals, to know all the terms thereof, as well as the governing law

[1] *Norman F. Blanchard, et al. v. Rolla, et al.*, No. C 74-288 (N. D. Ohio, filed July 5, 1974), Joint Appendix, Vol. I, at 201.

[2] **(a) (1) Equal rights.**—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.



of any organization with which they were to affiliate, and to know the views of other members on the proposals."[3] The District Court enjoined the ongoing referendum and required the officers of Local 47 to submit for approval a plan for conducting future referenda which would be consistent with the conclusions expressed in the Court's opinion.

Appellants filed a Motion to Modify the July 5, 1974, order. On November 1, 1974, the District Court filed a Memorandum and Order denying Appellants' motion stating:

> Defendants' motion does not appear well taken however. It should be noted that this Court's Order does not require the union executive board to submit *all* affiliation proposals to the membership for a referendum. What it does require is full disclosure of the terms of all proposals before a vote on any one will be approved by this Court.[4]

On December 3, 1974, MEBA filed a motion seeking to intervene, and a motion seeking to have its affiliation proposal placed on the referendum ballot. On January 20, 1975, the District Court filed another Memorandum and Order. The Court denied MEBA's motion to intervene but granted the motion to appear on the ballot, stating

> Placing MEBA on the affiliation referendum ballot is quite another matter however. Although it is true that § 3 of Article XXIII of the Constitution of Local 47 does not require that all affiliation proposals be voted upon on the same ballot, it somehow seems unnecessarily grudging for the union officers to conduct a referendum on only the proposal which they personally support. This Court has previously indicated that it would not hesitate to enjoin the defendants from using the union constitution to avoid

[3] District Court Opinion, Joint Appendix, Vol. I, at 209.

[4] Joint Appendix, Vol. I., at 215.

a referendum on an affiliation proposal. Such a refusal by union officers, who are, after all, fiduciaries, runs afoul of the policies which underlie §§ 411 and 501, because seriatim balloting in this case may result in unfair advantage for the proposal favored by the union leadership. Thus, the Court will enjoin the use of the constitutional provision and order the MEBA proposal placed on the ballot along with the ILA proposal.[5]

Appellants bring this appeal claiming that, consistent with their duty as defined in Local 47's Constitution,[6] they rejected MEBA's affiliation proposal and that the District Court erred in concluding that Sections 411(a)(1) and 501(a) of the LMRDA require presentation of a rejected offer in a referendum. Appellants further contend that the District Court properly denied MEBA's motion to intervene.

We turn first to consideration of the District Court's denial of MEBA's motion to intervene. Rule 24(a)(2), Fed. R. Civ. P., establishes a threefold test for nonstatutory intervention of right:

> (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

We note that from its inception Appellants' case has been handled by Gerald B. Lackey, a member of the Toledo, Ohio, law firm which regularly represents MEBA. Appellees are Local 47 members who are supporters of MEBA in its efforts to secure Local 47's affiliation. A rep-

[5] Joint Appendix, Vol. I., at 229.

[6] Constitution of Great Lakes and Rivers District, Masters, Mates and Pilots—Local 47, art. XVII, § 3 and art. XXIII, § 3.



resentative of MEBA suggested to Appellee Blanchard that he contact Lackey and another MEBA representative was present when Blanchard first met with Lackey. It was at this meeting that plans to take legal action against Local 47 and its officers were formulated. It appears that the interests of MEBA and of Appellees in this action are virtually identical. As we noted in *Afro American Patrolmen's League v. Duck*, 503 F.2d 294, 298 (6th Cir. 1974), "[a]n applicant for intervention has the burden of showing that representation by existing parties is inadequate." MEBA failed to carry this burden and the District Court did not err in denying MEBA's motion to intervene.

We turn to consideration of the remaining issue raised by Appellants—whether the District Court erred in requiring Appellants to include MEBA's affiliation proposal on the referendum ballot. Appellants point to Local 47's constitution and by-laws as not requiring inclusion of the MEBA proposal on the referendum ballot because they had in good faith considered the proposal and rejected it.

Appellees contend that the District Court correctly read LMRDA Sections 411(a)(1) and 501(a) to create a duty on the part of the individual Appellants to provide the membership with sufficient information to evaluate all affiliation proposals.

The Supreme Court in *Musicians Federation v. Wittstein*, 379 U.S. 171, 182-183 (1964), stated:

> "The pervading premise of both these titles [Title I and Title IV, Labor-Management Reporting and Disclosure Act of 1959] is that there should be full and active participation by the rank and file in the affairs of the union."

This Court, after reviewing the legislative history and judicial consideration of the LMRDA, concluded in *Sertic v. District Council of Carpenters*, 423 F.2d 515, 521 (6th

Cir. 1970), that "[u]nion members are entitled under the Act to the right of a meaningful vote. . . ."

However, this Court is not unfettered in its determination of what constitutes "full and active participation" or a "meaningful vote." As the Supreme Court noted in *Calhoon v. Harvey*, 379 U.S. 134, 138-139 (1964), issued the same day as *Musicians Federation, supra:*

> "Congress carefully prescribed that even this right against discrimination is 'subject to reasonable rules and regulations' by the union."

The Court also states

> "Plainly, [§101(a)(1)] is no more than a command that members and classes of members shall not be discriminated against in their right to nominate and vote." 379 U.S. at 139.

The Second Circuit in *Sheldon v. O'Callighan* [sic], 497 F.2d 1276, 1281 (2nd Cir. 1974), subscribed to the reasoning in *Allen v. International Alliance of Theatrical Employees*, 338 F.2d 309, 317 (5th Cir. 1964), "[t]his Court recognizes the need to exercise what Judge Wisdom referred to as a 'sound reluctance . . . to interfere in internal union affairs.'" The *Sheldon* Court added

> "The duly elected officers of a union have a right and a responsibility to lead, and to give the members the benefit of their advice on questions that arise." 497 F.2d at 1282.

The District Court Order in the instant case concluded with the following paragraph:

> To sum up: The motion of MEBA to intervene as a party plaintiff is denied; the affiliation proposal of MEBA shall appear on the ballot along with that of the ILA; the referendum shall be held at such time as defendants propose through the auspices of the American Arbitration Association; defendants shall permit at least thirty (30) days for dissemination of views by the membership following the mailing of the ballots; and any member shall be permitted to mail his views at any time to the membership through the AAA, as often as he wishes so long as he bears the expense thereof. IT IS SO ORDERED.[7]



We conclude that the District Court's actions in resolving this matter, with the exception of its direction to include the MEBA proposal on the referendum ballot, were proper under Section 411(a)(1).[8] The District Court unnecessarily intruded into the internal operations of Local 47 by directing that the MEBA proposal be added to the ballot. We do not read § 411(a)(1) to disallow seriatim voting on affiliation proposals so long as sufficient information about all proposals received by the Executive Board is disseminated to the membership to allow a reasoned and informed vote on the proposal which appears on the ballot. Appellees and their fellow members of Local 47 will be able to exercise their statutorily guaranteed right to an informed vote assuming the above dissemination of information. The membership of Local 47 may approve the ILA proposal or may reject it and await the opportunity to consider other such proposals.

That portion of the District Court's Judgment which directs that MEBA's affiliation proposal appear on the referendum ballot is reversed, the remaining portions of the Judgment are affirmed.

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[7] Joint Appendix, Vol. I, at 230.

[8] The portions of the Judgment of the District Court which we affirm are properly grounded upon Section 411(a)(1). The actions directed by the portion of the Judgment which we reverse would be improper under either Section 411(a)(1) or Section 501(a). Thus we need not reach the question of the applicability of the Section 501(a) fiduciary duty to the instant action.

**JUDGMENT OF THE COURT OF APPEALS**

(Filed April 2, 1976)

Nos. 75-1606, 75-1607

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

---

NORMAN F. BLANCHARD, *et al.*,
*Plaintiff-Appellees,*

vs.

ROLLA R. JOHNSON, *et al.*,
*Defendants-Appellants.*

---

Judgment of the District Court regarding the portion of the Judgment which directs that MEBA's affiliation proposal appeal on the referendum ballot is reversed and the remaining portions of the Judgment are affirmed.

Each party to pay its own costs on appeal.

# Supreme Court of the United States

**October Term, 1975**
**No. 75-1716**

NORMAN F. BLANCHARD, *et al.*,
*Petitioners,*

vs.

ROLLA R. JOHNSON, *et al.*,
*Respondents,*

and

MARINE ENGINEERS BENEFICIAL ASSOCIATION,
ASSOCIATED MARITIME OFFICERS, AFL-CIO,
*Applicants for Intervention.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

## BRIEF OF RESPONDENTS IN OPPOSITION

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# Supreme Court of the United States

**October Term, 1975**

**No. 75-1716**

NORMAN F. BLANCHARD, *et al.*,
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## BRIEF OF RESPONDENTS IN OPPOSITION

## QUESTION PRESENTED

Contrary to the Petitioners, Respondent believes that the issue presented is as follows:

Where Respondent Labor Union, through its governing body, has sought out and agreed to affiliate with another labor union, which affiliation must be ratified by the membership of Respondent, and where a stranger rival union has made an unsolicited offer of affiliation, which offer is in good faith rejected by the governing body of Respondent union, do the

provisions of the Labor Management Reporting and Disclosure Act of 1959, 29 USC §§401, 501 require that the rejected offer must also be presented in a referendum?

## STATEMENT OF THE CASE

### Introduction

This case, involving Titles I and V of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), originated in the District Court of the Northern District of Ohio, Western Division, before the Honorable Judge Nicholas Walinski, upon the Complaint and Motion for Preliminary Injunction and Motion for Temporary Restraining Order filed by three members of Respondent Great Lakes and Rivers District, Local 47—Masters, Mates and Pilots (Local 47). Petitioners allege violation by Respondent of rights conferred on them by §101(a) and §501 of the Act, 29 USC §§411, 501, in the conduct of a referendum by Respondent. The individual Respondents are or were officers or members of the Executive Board of Local 47. Both Local 47 and District 2, Marine Engineers Beneficial Association, Associated Maritime Officers, AFL-CIO (MEBA) are labor organizations within the meaning of LMRDA.

Petitioners are seeking to enjoin a referendum among all the members of Local 47 by which the Executive Board is carrying out the mandate of its constitution, which requires that any proposal for affiliation with another national or international union which has been approved by the Executive Board must then be submitted to the entire membership for ratification



or rejection. The Board has approved an affiliation with the International Longshoremen's Association, AFL-CIO (ILA), which is the subject of the referendum, and rejected an affiliation proposal by MEBA. Petitioners are supporters of MEBA. The Court enjoined the conducting of any referendum unless the plan therefor was approved by the Court. The Court has approved a plan, but in so doing, granted the motion of MEBA to appear on the referendum ballot, contrary to the wishes of the governing body of Local 47. Respondent appealed the granting of this motion, which appeal was granted by the Appellate Court, and the District Court's decision reversed in that respect. Petitioner seeks review of that decision.

### Background

Local 47 is a labor organization of about 550 members which admits to membership only supervising deck officers and captains of various ships, tugs, etc., operating generally on the Great Lakes and inland rivers (Local 47 Constitution, Art. IV, §§1-4, A.125).[1] Because of the limitation on membership to supervisors, Local 47 is not a labor organization within the meaning of the National Labor Relations Act, 1947, 29 USC §152(5), but is, as noted above, covered by §3(i) of LMRDA. MEBA is also a labor organization of supervisors (engineering officers), but not exclusively so[2] and is affiliated with the parent Marine Engineers Beneficial Association, AFL-CIO.

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1. References to the Appendix Volume I shall be shown as (A.125). References to the Appendix Volume II shall be shown as (A.II:18).

2. *Madden v. Marine Engineers Beneficial Association*, 46 LC §17,863 (D.C. So. Ill., 1962).

The government of Local 47 is composed of one paid staff member who is the President (A.116)[3] and an Executive Board of seven Vice-Presidents representing the various geographical areas covered by the Union (Local 47 Constitution, Art. V, §2). An annual convention is held in March and officers are nominated by the convention delegates, but elected by mail ballot by all the members, this taking place each three years (Local 47 Constitution, Arts. IX, XIV).

**Raiding by MEBA**

In April, 1974, MEBA attempted to induce various members of Local 47, including the Petitioners herein, who were employed by fleet owners under established collective bargaining contracts with Local 47, to give up their membership in Local 47 and join MEBA (A.162-165; A.II:22-23). This "raiding" activity centered around the Great Lakes fleets of U.S. Steel, Bethlehem and International Harvester, all of which were under contract with Local 47 at the time—U.S. Steel since 1956 (A.51-52, 165). These three fleets comprise about twenty-five percent of the membership of Local 47 (A.157). This raiding activity culminated on April 29, 1974 in MEBA claiming that it, not Local 47, represented a majority of the deck officers in each of the three fleets (A.II:11-12, 24). As a result of these demands, the three fleet owners forced Local 47 to participate in private elections[4] to determine

3. At (A.125) Captain Johnson testified that both he and Duff were full-time paid staff members. Since that hearing date, Captain Johnson did not run for re-election and there is now only one full-time staff position.

4. Because all of the employees involved were supervisors within the meaning of 29 USC §152(11), the National Labor Relations Board had no jurisdiction to conduct the election.



which Union, if any, would represent their officers (A.II:11-12, 26-29; A.137-138). Local 47 attempted to block the elections by filing for an injunction in Common Pleas Court in Cleveland, Ohio (A.II:35-38), in order to gain time to invoke the provisions of Article XX of the International AFL-CIO Constitution (A.II:30-34), which provision covers raiding between AFL-CIO affiliates. At the Common Pleas Court hearing, MEBA was represented by Mr. Lackey, Petitioners' counsel herein. By agreement, the action was dismissed after certain changes in the election procedure were effected (A.II:8-9).[5]

**Affiliation With the ILA**

Local 47 had previously been affiliated with the International Organization, Masters, Mates and Pilots (IOMM&P), but disaffiliated when it threatened to take away the autonomy of Local 47 (A.126, 127, 137). Subsequently, the International affiliated with the ILA as the Marine Division (ILA Constitution, Art. XXVII; A.II:13). When merger proposals from MEBA were rejected by Local 47, the latter knew it would be in a fight and need help (A.130-131). It sought the ILA because the ILA would grant an autonomous charter and could invoke the provisions of Article XX of the AFL-CIO Constitution, the Settlement of Internal Disputes Plan (A.II:30-34; A.137). The principal reason for the merger was to obtain this protection umbrella and therefore non-AFL-CIO affiliates, such as the Teamsters, could not seriously be

5. After close of hearings in this matter, the elections were concluded: Local 47 retained the right to represent the mates at U.S. Steel, 59 to 40 (3 votes "no union"), but lost to District 2 at Bethlehem 6 to 10 (3 votes "no union"), and International Harvester 0 to 3.

considered (A.137). Finally, in mid-May, 1974, agreement between President Gleason of the ILA and Captain Johnson of Local 47 was reached and reduced to writing (A.II:2-5). Pursuant to the Constitution of Local 47, the approval of the Executive Board was sought and obtained (A.II:13-17). Following this, a membership referendum had to be conducted in accordance with Local 47 Constitution, Article XXIII, §3.

**First Referendum on Affiliation With ILA**

On May 24, 1974, a mail ballot referendum (A. 16-19) was conducted by Local 47. In the ballots mailed to members under the U.S. Steel, Bethlehem and International Harvester contracts, there was also a strike ballot, since contract negotiations were approaching (A.135). In order to determine the trend of both the strike vote and affiliation referendum, ballots were opened in bunches, without waiting for the end of the voting period (June 24). The ballots were opened in such a way as to preserve the secrecy of the ballot and no attempt was made to learn how any individual voted (A.33, 113-116, 135-136). Within a few days after the Common Pleas Court hearing, MEBA representatives found several of its supporters in the ranks of Local 47 and took them to its attorney, Mr. Lackey, who then filed for an injunction in Federal Court in Toledo in order to block the referendum, claiming *inter alia* that the balloting was not, in fact, a secret ballot (A.66-68, 70, 74-76, 27-29).

**June 14 and June 18 Hearing**

At the conclusion of the hearing, the Court issued its order, finding, in essence, that the balloting was not, in fact, secret, and impounded the ballots. The



Court went on to hold, "The Court is not enjoining any referendum but will leave the Executive Board free to follow the Constitution in conducting a secret ballot election with adequate information as to the advantages and disadvantages of any affiliation with the ILA." (A.33). On the record, the Court clarified "advantages and disadvantages" by saying it means "terms" (A.176). In an off-the-record discussion in chambers, the question of mailing out the ILA Constitution was brought up and was found by the Court at that time not to be necessary.

**Second Referendum**

Immediately after the Court hearing and ruling of June 18, a new plan of referendum to conform to the Court's order was prepared. Time was still of the essence and it was intended that the ballots would go out on the nineteenth of June. After a conversation with Petitioners' counsel, the mailing of the ballots was delayed one day to permit Petitioners to bring in any literature they may have wanted to distribute to the membership, and a Judge was designated the election umpire to supervise the mailing, retention and counting of the ballots, to comply with Petitioners' request to insure the secrecy of the ballot (A.195-198). Ballots were ultimately mailed on July 20 in accordance with the plan (A.II:40-47).

**July 1, 1974 Hearing**

Petitioners filed a Motion for a Temporary Restraining Order on June 19, claiming basically that insufficient notice and information was being given to the membership and members could not have access

to the mailing list to send out opposing views (A.39-40). The Court issued its order July 5, enjoining the conduct of the second referendum and any future referendum unless approved by the Court. The Court went on to hold, "No such plan will be approved unless it contains, at a minimum, adequate safeguards for the secrecy of the ballot, full disclosure of all the terms of all affiliation proposals, as well as copies of the constitution of the organization with which affiliation is to be considered and voted upon, and access to the mailing list of defendant Local 47 by all members in sufficient time to express their views before a vote is to begin." (A.200-211).

A motion to modify the Court's July 5 order was filed by Respondents (A.212) which was denied (A. 214-215). The thrust of the Motion to Modify was that the Court's order would seem to require a referendum on all or any proposal, no matter how specious, whereas the Constitution would require a referendum only on the proposals approved by the Executive Board (Local 47 Constitution, Art. XXIII, §3). The Court, however, held that its order "does not require the union executive board to submit *all* affiliation proposals to the membership for a referendum." (A.215). But the Court went on to hold that it would not hesitate to enjoin the use of the union constitution to avoid a referendum on a merger proposal which may be arguably to the benefit of the union (A.215).

**Third Referendum**

MEBA, by telegram (A.222-223) on September 13, 1974, requested Captain Johnson to form a committee to meet with MEBA to explore a merger or affiliation proposal. On October 4 the offer was declined by the Executive Board because MEBA was still raiding established bargaining relationships of Local 47 (A.224). On November 11, 1974, MEBA made a formal proposal for affiliation (A.225-228).



On December 3, an informal hearing was conducted by the Court in chambers to approve a plan (A.231-237) for the third referendum which would conform to the Court's July 5 order. At the hearing, MEBA, without prior notice to Respondents, appeared at the hearing, moved to intervene in the proceedings, and moved to have its proposal placed on the ballot for affiliation (A.216-220). Over the very strong objection of Respondents, the Court granted MEBA's motion to have its offer placed on the referendum ballot, while denying its motion to intervene. The Court also approved the proposed plan with a few modifications with which Respondents do not take issue (A.228-230). Respondents appealed the granting of MEBA's motion and the Circuit Court agreed with Respondents' position and reversed the District Court's order. Respondents did not take issue with any other portion of the District Court's order. Petitioners now seek review of the Circuit Court's decision.

## ARGUMENT AGAINST GRANTING THE WRIT

Contrary to the Petitioners' statements, the law in this area is well settled. As long as the rules and regulations of a labor union are reasonable and lawful and not in violation of the LMRDA and if the union officials follow the provisions of the by-laws and Constitution, there can be neither an infringement upon the rights of the members not a breach of the fiduciary duty owed to those members by the officers. *Calhoon v. Harvey*, 379 U.S. 134 (1964). This was clearly set forth in the deci-

sion below by the Circuit Court and there has been no showing by Petitioners that the complained of constitutional provision is either unreasonable or unlawful. As stated by Judge Breitenstein in *Smith v. United Mine Workers*, 493 F.2d 1241 (10th Circuit, 1974),

> "The attack of the plaintiffs can go only to the reasonableness of the pertinent constitutional provision . . . LMRDA is remedial legislation and as such should be liberally construed. [Citation omitted]. It does not, however, purport to project absolute judicial control over the internal management of unions. [Citation omitted]. The rights granted by the Act are specific. Congress did not intend that the Act be an invitation to the courts to intervene at will in the internal affairs of union. [Citation omitted]. There is no allegation and no proof that the constitutional provision before us is unfair or unreasonable or that it has been applied discriminatorily. [Citation omitted]."

See also *Sheldon v. O'Callighan*, 497 F.2d 1276 (2nd Circuit, 1974), *Allen v. International Alliance of Theatrical Employees*, 338 F.2d 309 (5th Circuit, 1964) and *Gurton v. Arons*, 339 F.2d 371 (2nd Circuit, 1964).

The Petitioners would claim that review of this case is essential in order to preserve the right of the Union members to fully and actively participate in the affairs of the Union. However, this Court in *Musicians Federation v. Wittstein*, 379 U.S. 171 (1964) stated that it was not necessary "to have each union member make decisions in detail as in a New England town meeting. What is required is the opportunity to influence policy and leadership by free and periodic elections." It should be noted that one year after Petitioners filed the original



complaint in Court and blanketed the membership with substantial publicity regarding the Court's decisions to that date, Petitioner Blanchard ran against Respondent Duff for the office of President of the Union. His campaign was in no small measure based upon the arguments contained in Petitioners' Brief. On May 30, 1975, Duff was elected President by a vote of 221 to 113, this by a secret mail ballot election among all members. Thus, the membership has had the opportunity to speak regarding the way it feels its policies are being carried out by the leadership it has elected.

## CONCLUSION

It is respectfully submitted that the Court of Appeals' decision in this case is a sound, well-reasoned opinion which follows the clear dictates of the law as laid down by both Congress and this honorable Court and the decision should neither be reviewed nor reversed.

Respectfully submitted,

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